

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06105

██████████ 2020
SIGNATURE CONFIRMATION

██████████
██████████
Request # 162782

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, the Department of Social Services (the "Department") sent ██████████ ██████████ (the "Appellant"), a Notice of Action ("NOA") informing her that she was approved for Medicaid for Long Term Care Services ("LTC") effective ██████████ 2020.

On ██████████ 2020, ██████████ the Appellant's Conservator, requested an administrative hearing to contest the effective date of the LTC.

On ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for ██████████ 2020.

On ██████████ 2020, in accordance with sections 17b-60, 17b-61, and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals participated in the hearing:

██████████, Appellant's Conservator
Felicia Andrews, Department's Representative
Carla Hardy, Hearing Officer

The Appellant did not participate in the hearing.

Due to the COVID-19 Pandemic, the hearing was held as a telephonic hearing.

STATEMENT OF THE ISSUE

The issue is whether the Department correctly approved the LTC effective [REDACTED] 2020.

FINDINGS OF FACT

1. On [REDACTED] 2020, the Department received an application for LTC on behalf of the Appellant. (Exhibit 1: W-1 LTC Application)
2. The Appellant is [REDACTED] years old (DOB [REDACTED]/38). (Exhibit 1)
3. The Appellant is a widow. (Exhibit 1)
4. [REDACTED] ("the Conservator") is the Appellant's Conservator. (Hearing Record)
5. On [REDACTED] [REDACTED] 2020, the Department reviewed the Appellant's application. The Department requested that the Appellant submit copies of her [REDACTED] statement for the period of [REDACTED] 2019 through [REDACTED] 2020; proof of the face and cash values of her [REDACTED] policy; and the status of her [REDACTED]. The Appellant was notified that there is no eligibility for Title 19 LTC benefits for any month in which the Appellant's counted assets exceed \$1,600.00. The requested information was due by [REDACTED], 2020. (Exhibit 2: Verification We Need documents dated [REDACTED]/20, [REDACTED]/20, [REDACTED]/20 and [REDACTED]/20)
6. On [REDACTED] 2020, the Department requested that the Appellant supply her [REDACTED] statements for the period of [REDACTED] 2019 through [REDACTED] 2020; proof of the face and cash values of her [REDACTED] policy; and the status of her [REDACTED]. The requested information was due by [REDACTED], 2020. (Exhibit 2)
7. On [REDACTED] 2020, the Department requested that the Appellant supply her [REDACTED] statements for the period of [REDACTED] 2019 through [REDACTED] 2020; proof of the face and cash values of her [REDACTED] policy, and the status of her [REDACTED]. The requested information was due by [REDACTED] 2020. (Exhibit 2)
8. On [REDACTED] 2020, the Appellant reduced her [REDACTED] checking account [REDACTED] balance to \$382.48. (Exhibit 3: [REDACTED], [REDACTED]/20 – [REDACTED]/20 and [REDACTED] Transaction History, [REDACTED]/20 – [REDACTED]/20)
9. On [REDACTED] 2020, the Department contacted [REDACTED] by telephone and verified that the Appellant's cash value of her life insurance policy equaled \$795.21. (Hearing Record)

10. The face value of the Appellant's [REDACTED] policy is \$3,000.00. (Appellant's Exhibit C: NOA, [REDACTED]/20)
11. On [REDACTED] 2020, the Department requested the Appellant's [REDACTED] statements for [REDACTED] 2020 through [REDACTED] 2020. The Appellant was notified that the combination of the \$795.21 cash surrender value of the [REDACTED] and the previously submitted [REDACTED] statements placed her over the asset limit. The requested information was due by [REDACTED] 2020. (Exhibit 2)
12. The highest [REDACTED] 2020 balance in the Appellant's [REDACTED] account equaled \$2,547.83 on [REDACTED] 2020. (Exhibit 3)
13. The highest [REDACTED] balance in the Appellant's [REDACTED] account equaled \$2,957.73 on [REDACTED] 2020. (Exhibit 3)
14. The highest [REDACTED] balance in the Appellant's [REDACTED] account equaled \$4,567.63 on [REDACTED] 2020. (Exhibit 3)
15. The highest [REDACTED] balance in the Appellant's [REDACTED] account equaled \$4,371.58 on [REDACTED] 2020. (Exhibit 3)
16. The Appellant receives \$571.00 in Social Security ("SSA") and \$232.00 in Supplemental Security Income ("SSI") monthly. Her total income equals \$803.00 (\$571.00 + \$232.00 = \$803.00) monthly. (Exhibit 3; Department's Testimony)
17. The Department calculated the value of the Appellant's [REDACTED] account by subtracting the Appellant's \$803.00 monthly income from the ending balance of each month. (Department's Testimony)
18. On [REDACTED] 2020, the Department determined through its examination of the Applicant's documentation that the Appellant's assets exceeded the asset limit in [REDACTED] [REDACTED] and [REDACTED] of 2020. The Department granted the LTC effective [REDACTED] 2020. (Appellant's Exhibit C: NOA, [REDACTED]/20)
19. The Department is diverting the Appellant's applied income to cover her \$75,530.00 outstanding nursing home bill for the period covering [REDACTED] 2020 through [REDACTED] 2020. (Hearing Record)
20. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested the hearing on [REDACTED], 2020; therefore, this hearing is due on [REDACTED], 2020, and is timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 17b-260 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Connecticut General Statutes 17b-261(c) provides that for the purposes of determining eligibility for the Medicaid program, an available asset is one that is actually available to the applicant or one that the applicant has the legal right, authority or power to obtain or to have applied for the applicant's general or medical support. If the terms of a trust provide for the support of an applicant, the refusal of a trustee to make a distribution from the trust does not render the trust an unavailable asset. Notwithstanding the provisions of this subsection, the availability of funds in a trust or similar instrument funded in whole or in part by the applicant or the applicant's spouse shall be determined pursuant to the Omnibus Budget Reconciliation Act of 1993, 42USC 1396p.
3. "The department's Uniform Policy Manual ("UPM") is the equivalent of state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
4. Uniform Policy Manual ("UPM") § 4005.05(B)(1) provides that the Department counts the assistance unit's equity in an asset toward the asset limit if the asset is not excluded by state or federal law and is either: available to the unit; or deemed available to the assistance unit.
5. UPM § 4005.05(B)(2) provides that under all programs except Food Stamps, the Department considers an asset available when actually available to the individual or when the individual has the legal right, authority or power to obtain the asset, or to have it applied for, his or her general or medical support.
6. "Bank accounts include the following. This list is not all inclusive." UPM § 4030.50(A)
 1. Savings account;
 2. Checking account;
 3. Credit union account;
 4. Certificate of deposit;
 6. Patient account at long-term care facility;
 7. Children's school account;
 8. Trustee account;
 9. Custodial account.
7. UPM § 4030.05(B) provides that part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount

of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

The Department correctly determined that the Appellant's [REDACTED] account is a counted asset and was available to the Appellant.

The Department incorrectly determined the value of the Appellant's [REDACTED] account by subtracting the Appellant's monthly income from the bank balance as the end of each month.

8. UPM § 4005.15 provides that at the time of application, the assistance unit is ineligible for assistance until the first day it reduces its equity in counted assets to within the particular program asset limit.
9. UPM § 4030.30(A) provides that for all programs: 1. The owner of a life insurance policy is the insured unless otherwise noted on the policy, or if the insurance company confirms that someone else, and not the insured, can cash in the policy; and 2. Policies such as term insurance policies having no cash surrender value are excluded assets.
10. UPM § 4030.30(C) provides that for the AABD and MAABD programs: 1. If the total face value of all life insurance policies owned by the individual does not exceed \$1,500.00, the cash surrender value of such policies is excluded. In computing the face value of life insurance, the Department does not count insurance such as term insurance which has no cash surrender value; and 2. Except as provided above, the cash surrender value of life insurance policies owned by the individual is counted toward the asset limit.

The Department correctly determined the cash surrender value of the Appellant's [REDACTED] policy is not excluded as the face value of \$3,000.00 is over the \$1,500.00 threshold.

11. UPM § 1540.15(A) provides for the methods of verification. The information provided by the assistance unit is verified through a cooperative effort between the Department and the members of the unit:
 1. The Department determines the adequacy and appropriateness of the method selected.
 2. The method of verification which is chosen depends upon the nature of the information being verified and the feasibility of other available methods.

The Department correctly contacted [REDACTED] company to verify the cash surrender value of the Appellant's life insurance policy.

12. UPM § 1560.10 discusses Medicaid beginning dates of assistance and provides

that the beginning date of assistance for Medicaid may be one of the following:

- A. The first day of the first, second or third month immediately preceding the month in which the Department receives a signed application when all non-procedural eligibility requirements are met and covered medical services are received at any time during that particular month; or
- B. The first day of the month of application when all non-procedural eligibility requirements are met during that month; or
- C. The actual date in a spenddown period when all non-procedural eligibility requirements are met. For the determination of income eligibility in spend-down, refer to Income Eligibility Section 5520; or
- D. The first of the calendar month following the month in which an individual is determined eligible when granted assistance as a Qualified Medicare Beneficiary (Cross Reference: 2540.94). The month of eligibility determination is considered to be the month that the Department receives all information and verification necessary to reach a decision regarding eligibility.

13. UPM §4026.05 provides that the amount of assets counted in determining the assistance unit's eligibility is calculated in the following manner:

- A. The Department determines the amount of the assistance unit's available non-excluded assets by subtracting the value of the following assets owned by the assistance unit:
 - 1. those assets considered to be inaccessible to the assistance unit at the time of determining eligibility; and
 - 2. assets which are excluded from consideration.
- B. The Department adjusts the amount of the assistance unit's available non-excluded assets by:
 - 1. subtracting a Community Spouse Disregard (CSD), when appropriate, for those individuals applying for assistance under the MAABD program (Cross Reference: 4022.05); and
 - 2. adding any amount of assets deemed to be available to the assistance unit (Cross Reference: 4025); and
 - 3. subtracting a Long-Term Care Insurance Disregard (LTCID), when appropriate, for those individuals applying for or receiving assistance under the MAABD program (Cross Reference: 4022.10).
- C. The amount remaining after the above adjustments is counted.

The Department correctly counted the Appellant's assets for the months of [REDACTED] 2020 through [REDACTED] 2020.

14. UPM 4005.15(A)(2) provides for that at the time of application, the assistance unit is ineligible until the first day of the month in which it reduces its equity in counted assets to within the asset limit.
15. UPM § 4005.10(A)(2)(a) provides that the asset limit for Medicaid for a needs group of one is \$1,600.00.

The Appellant had assets that exceeded the Medicaid asset limit of \$1,600.00 for the months of [REDACTED] 2020 through [REDACTED] 2020.

On [REDACTED] 2020, the Department correctly granted the Appellant's application for Long Term Care Medicaid effective [REDACTED] 2020, as the assets were reduced to under the allowable limit.

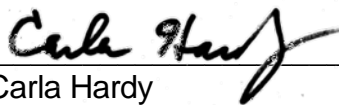
DISCUSSION

The Conservator issued a \$500.000 stipend check to the Appellant every month. The Appellant did not cash these checks for several months. This caused the balance in her bank account to increase. The Conservator claims that the COVID-19 Pandemic made it difficult to spend the Appellant's assets down in a timely manner. He also objected to the fact that the Department verified the cash surrender value of the [REDACTED] policy via telephone contact. He did not claim that the value was incorrect, nor did he offer any evidence to dispute the Department's findings.

Had the Department correctly calculated the value of the Appellant's [REDACTED] account by subtracting the Appellant's monthly income from the highest balance in each month instead of the month end balance, it would have shown that the Appellant's [REDACTED] balance in itself placed the Appellant over the \$1,600.00 asset limit. The Department incorrectly calculated the value of the bank account but correctly determined that the Appellant's combined assets exceeded the \$1,600.00 asset limit.

DECISION

The Appellant's appeal is **DENIED.**



Carla Hardy
Hearing Officer

Pc: [REDACTED]
Rachel Anderson, Cheryl Stuart, Lisa Wells, Felicia Andrews, Department of Social Services, New Haven Office

RIGHT TO REQUEST RECONSIDERATION

The appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

RIGHT TO APPEAL

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45-day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.